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Walsh's Crime: Prosecution by Defamation

■ The special prosecutor should be fired for blatant politicizing.

The President's constitutional power to issue pardons was employed to defeat a vicious, partisan special prosecutor. The wonder is that so many "civil libertarians" willfully blind themselves to independent counsel Lawrence Walsh's own abuses, as if they believed—to paraphrase Barry Goldwater—that extremism in the prosecution of Republicans is no vice.

Consider the recent behavior of Walsh's office. This past fall, he hired a bitterly partisan new prosecutor, James Brosnahan of California, who brought a new indictment of Caspar Weinberger almost on election eve. That new count was thrown out by the first court that reviewed it, so we know it was bad lawyering. But much worse, from the thousands of pages of Weinberger notes, the new indictment quoted a few phrases about President Bush. Is there anyone who really believes this was done without partisan motives?

When the pardons were issued, Walsh was home in Oklahoma while his staff was running the show in Washington. Now he has stepped into the act again, engaging in wholesale slander. While he has never brought a single charge against Bush, Walsh now goes on television to talk of Bush's "misconduct" and "cover-up." Though Weinberger has never been convicted of any crime, Walsh says Weinberger "lies as well in press conferences as he does when he testifies before Congress."

While Robert McFarlane, Alan Fiers and I were forced to plead guilty to the misdemeanor "withholding information from Congress," Walsh now says we were guilty of the felony "lying to Congress." He never even charged—much less convicted—any of us of that very different crime. Every first-year law student knows a prosecutor must work in the courtroom, not through defamation. Professionalism, if

not personal honor, should keep Walsh from hurling irresponsible accusations.

Nor is this Walsh's first brush with illegal behavior. He and his chief aide, Craig Gillen, avoided District of Columbia income taxes for years and were hit with back tax bills and penalties by the D.C. government in 1992. Walsh and Gillen declared their home towns to be their "work stations" so that they could get extra pay for each day on the job in Washington and flights home on the weekends at government expense. Those actions are of a piece with Walsh's attitude: Laws are made to trap Republican officials, not

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to restrain the prosecutors attacking them.

In my case, as I explain in "Undue Process" (Free Press), Walsh threatened to prosecute me for statements I made on the Evans and Novak TV show (so much for the First Amendment) and, citing potential conflicts, refused to deal with the lawyers I hired, forcing me to use others (and so much for the Sixth Amendment). The Walsh abuses are a civil libertarian's nightmare, but the silence of most civil liberties groups is deafening.

One can only hope that the three-judge panel that appointed Walsh will do its duty and rein him in or fire him.

What of Walsh's excuses for his conduct? He now insists that the entire case would have changed, and might have led to the impeachment of President Reagan, if he had only had Weinberger's notes. But in 1987, Walsh received Secretary of State George P. Shultz's notes, and these told the story of the arms-for-hostages debate within the Reagan Administration. As Shultz recorded, he and Weinberger opposed what they saw as a direct trade of arms for hostages, while Vice President Bush did not. Nothing in the "new" Weinberger notes adds to or contradicts these facts, which Walsh has known for five years. What's more, he had access to Weinberger's notes for a year and half before he even looked at them.

The truth is that Walsh did not pursue real crimes, nor did he "follow the money," as the Watergate prosecutors did. Instead, he followed an incredible conspiracy theory designed to pull in every high-ranking Reagan-era official and impeach Reagan—and to secure Walsh's place in the history books. He will be in there now, all right, for the longest, costliest and least fruitful special prosecution ever.

Next year, Congress will consider whether to resurrect the special prosecutor law. Our country does not need such an invitation to prosecutorial abuses. We managed to handle both Watergate and the Spiro Agnew case without such dangerous

mechanisms. At bottom, Iran/Contra was a fight between the executive and legislative branches over foreign policy power, in which leaders of both branches committed abuses. The use of the criminal justice system to attack one side in that political struggle is an abuse of the criminal process. The special prosecutor system should end with Walsh's own intemperate, unprofessional outbursts.

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